

REMARKS

It is noted that claims 1-16, 18 and 19 are pending in the application and that all of the claims stand rejected as discussed more fully below.

Prior to discussing the rejection of applicant's claims on the merits, applicant's undersigned attorney wishes to thank Examiner Andre L. Jackson for the telephone interview courteously granted on March 24, 2006 with applicant's undersigned attorney and applicant Dr. Kevin L. Parsons. During the telephone interview, Dr. Parsons described the background to the leverage end cap called for in applicant's claims and the commercial success achieved by the claimed leverage end cap. Dr. Parsons also described why one of ordinary skill in the art would not have modified the structure of the Hustad pressure point device (5,278,003) in view of the crosshandle baton and hand guard disclosed in the Ashihara reference (5,188,362). No agreement was reached in respect to allowance of any of the claims as considered by Examiner Jackson in the outstanding Office Action.

Turning now to the rejection of applicant's claims on their merits, claims 1-16, 18 and 19 stand rejected under 35 USC §103(a) on the Hustad reference in view of the Ashihara reference. Applicant's claims have been amended in a manner believed to more clearly distinguish over the Hustad and Ashihara references and, along with new claims 20-23, are believed to be condition for allowance. Claims 11 and 17 have been cancelled, which cancellation is to be taken without prejudice to applicant's claim to novelty in the subject matter defined therein.

In rejecting applicant's claims on Hustad as the primary reference, the Examiner has acknowledged that Hustad "does not specifically disclose that the tapered neck portion is a circumferential groove of concave profile nor does the cylindrical segment distal end have a smaller external diameter than the knob of the end piece as claimed." The Examiner has relied on Ashihara as a secondary reference that "teaches an end cap for use with a leverage baton handle (2). The end cap comprising a unitary body (8) defining a longitudinal axis and having an enlarged knob end (8e); the body having an opposite threaded cylindrical segment distal end (8b, 15) of a smaller external diameter than the knob end for attaching the end cap to the leveraged baton handle at a proximal end (9a) of the baton handle in substantially axial alignment therewith..." The Examiner further holds that the body of Ashihara has a reduced diameter circumferential groove of concave profile (8c) intermediate and contiguous to the knob and the distal end, the neck portion being sized to receive a user's finger in wrapped relation about the

neck portion so that the finger is captured between the knob and the distal end such that the baton handle can be held firmly adjacent the proximal end of the handle with at [sic--a] steadfast and leveraged grip. From this the Examiner holds that it "would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the end piece device of Hustad to incorporate the specific shape of the end cap as taught by Ashihara to provide an improve ergonomic end piece to be sized to receive a user's finger in wrapped relation about a neck portion so that the finger is captured between a knob and a distal end such that a baton can be held firmly adjacent a proximal end of the baton with at [sic--a] steadfast and leveraged grip."

As pointed out during the aforementioned telephone interview, the Ashihara reference discloses a crosshandle baton wherein the crosshandle 2 is connected to the baton 1 intermediate its length and is disposed in normal relation to the longitudinal axis of the baton. In use of the Ashihara crosshandle baton, it is clearly disclosed that a user's hand grips the crosshandle 2 such that the base of the hand or little finger of the hand is adjacent the baton 1 when the outer circumferential surface 8c is gripped with a thumb and forefinger. Col. 7, lines 25-34 of Ashihara. It is also pointed out that the circumferential surface 8c of Ashihara is "relatively rotational" and is neither illustrated nor described as having a generally U-shaped concave profile formed between and contiguous to an enlarged end knob and a cylindrical distal end of larger diameter than the minor transverse cross-sectional area of a U-shaped groove or sized to capture a little finger between a knob end and a cylinder distant end as called for in applicant's claims. Nor does Ashihara teach or suggest mounting the rotational member 8 on an end of the baton 1 so as to be axially aligned therewith. Thus, in addition to being for a totally different purpose, removal of the upper rotatable member 8 from the Ashihara crosshandle would destroy the Ashihara reference for its intended use. Moreover, the caselaw is clear that one cannot pick and choose only a selected component from a combination of elements where there is no teaching, suggestion or motivation for such removal and wherein removal, of such an element would destroy the overall combination for its intended purpose.


It was also pointed out by applicant Dr. Parsons that one would not be lead by the Hustad reference to modify the Hustad end piece 10 in a manner to achieve applicant's claimed leverage end cap, whether taken in combination with Ashihara or not. More particularly, it was pointed out that gripping the end piece 10 of Hustad as suggested by the Examiner would place the enlarged base 14 in the palm of one's hand so as to make it very uncomfortable in addition to

adversely affecting the grip on the end piece that could be obtained. Such gripping of the Hustad end piece 10 would tend to expand the user's hand while at the same time the user is trying to contract the little finger around the reduced diameter intermediate shaft 10. This will make it difficult to use the little finger position as the fulcrum point for increasing the leverage force applied by the baton when striking an object. This problem is exacerbated when the gripping hand is perspiring or otherwise wet.

In view of the foregoing, applicant's claims 1-10, 12-16 and 19-21, as now presented, are believe to be in condition for allowance and such action is earnestly solicited. Should the Examiner determine that a telephone interview with applicant's undersigned attorney would advance prosecution of the application, it is respectively requested that the Examiner initiate such a telephone interview.

Respectfully submitted,

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